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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,676	07/13/2001	Michael W. Austin	210_234	5184

7590 12/31/2003

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EXAMINER
NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 12/31/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/904,676	AUSTIN ET AL. <i>BB</i>
	Examiner	Art Unit
	Jennifer E. Novosad	3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 17-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 17-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 13 July 2001 and 27 October 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_ .

## **DETAILED ACTION**

*At the outset*, it is noted that the Request for Continued Examination, mailed on October 27, 2003 (see Paper No. 13) was matched with the application on December 10, 2003, i.e., after the mailing of the Notice of Abandonment, mailed on November 17, 2003 (see Paper No. 12). *Thus*, the holding of abandonment has been withdrawn and the request filed on October 27, 2003 for a Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 09/904,676 is acceptable and an RCE has been established. An action on the RCE follows.

### ***Drawings***

The drawings were received on October 27, 2003 (Paper No. 14). These drawings are approved. It is noted that Figure 2 has not been replaced.

### ***Claim Objections***

Claim 18 is objected to because "an" in line 3 should be changed to --a--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The functional limitation "to form a passage for conducting air" in lines 2-3 of claim 17 renders the claim indefinite in view of the structural relationship of the claimed elements. *In particular*, if panels are placed in the openings of the frames and the seals are for sealing the panels in the openings, it is unclear how a passage is formed. *Similarly*, it is unclear from the functional limitation "for enclosing each frame" in line 6 of claim 17 how the frame is "enclosed" when panels are placed in "top, bottom and two side sections" of the "three dimensional frame". It appears that the front and back of the three dimensional frame would also have to contain panels in order for the frame to be enclosed. *Thus*, if the frame is "enclosed", it is unclear how air is conducted.

The limitation "a compressible seal... affixed to said side pieces" in lines 7-8 of claim 17 renders the claim indefinite since it is unclear how one, i.e., "a", seal can be attached to multiple pieces, i.e., "side pieces". It appears more appropriate to recite that *each* side piece has a seal affixed thereto. *Further*, the "hinged" panel has not been properly set forth as being in an opening having a seal and thus the limitation "with said seal" in the last line of claim 17 renders the claim indefinite.

The language of the limitation "at least one panel" in line 12 of claim 17 renders the claim indefinite since it is unclear whether this panel is one of the panels set forth in line 6 of the claim. *Further*, if these panels are different elements, then the limitation "each panel" in lines 1-2 of claim 18 lacks proper antecedent basis in the claim, since it is unclear which one (or all) of the panels is being referenced.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIlwraith '393 in view of Hampel '672.

McIlwraith '393 discloses a unit comprising a three dimensional frame which has side pieces (e.g., 26 and 27 in Figure 4) partially defining rectangular openings (see Figure 2) in top, bottom and side sections thereof; panels (11, 15, 12, and 12) are mounted in the openings at top, bottom, and side sections (respectively) thereby enclosing each frame; at least one hinged panel (13) connected to an end piece (27) of one of the frames in an opening at a front thereof by a hinge (20) so that the panel (13) can move between an open and a closed position within a frame opening; compressible seals (40 - see Figures 5 and 6) contained in each frame and affixed to the side pieces (27 - see Figure 6) and arranged to be compressed and closed against an inside surface of the panel (11-15) when the outer surface (at 12 or 13 in Figure 6) is flush against the frame; and a latching means (at 58 and 59 in Figure 60) for securing the hinged panel (13) in the closed position within a frame opening to lock the panel (13) in sealing contact with the seal.

The claims differ from McIlwraith '393 in requiring: (a) a series of frames connected (see line 2 of claim 17); and (b) the hinge to be a living hinge (see line 13 of claim 17).

*With respect to (a),* although McIlwraith '393 shows only one frame, in view of the Section 112 rejections, advanced above, and the fact that the claim does not recite how the frames are connected, it would have been an obvious design choice to one of ordinary skill in the

art at the time the invention was made to have provided a series, i.e., more than one, of frames, as needed, for increased capabilities of the unit.

*With respect to (b),* Hampel '672 teaches a unit comprising a frame comprised of panels connected together and a panel (28) hinged to the frame by living hinges (206 - see Figure 10E) whereby the living hinges each comprise an edge extrusion (left side of Figure 10E), a mounting flange (right side of Figure 10E) connected together by a hinge portion (generally between 236); and a latching means (see Figure 11D) for securing the hinged panel (28) in the opening in the frame.

*Thus,* it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the unit of McIlwraith '393 with a living hinge, as taught by Hampel '672, for ease in economy and manufacture since the hinge can be manufactured in one piece.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIlwraith '393 in view of Hampel '672 as applied to claim 17 above, and further in view of Brown '703.

The claim differs from the above references in requiring a second hinged panel connected by a living hinge to a second end piece and the latching means acting therebetween.

Brown '703 teaches that it is old to have a first hinged door (25) connected to a first end piece (22) of a frame opening and a second hinged panel (26) attached to a second end piece of the frame opening whereby a latching means (unnumbered - see Figure 2) acts therebetween to secured the panels (25 and 26) in a closed position.

*Thus,* it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the combination of McIlwraith '393 in view of Hampel

'672 with a second hinged panel connected (by a living hinge, as taught by Hampel '672) to a second end piece and secured by a latching means to the first hinged panel, for increased ease in use of the unit.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Benthem *et al.* '000 in view of McIlwraith '393 and Hampel '672.

Van Benthem *et al.* '000 disclose a unit comprising a series of three dimensional frames (one third of Figure 1 is considered to define one frame) that are connected together whereby each frame has side pieces (at 4 in Figure 1 and including unnumbered element between 12 and 40 in Figure 5) partially defining rectangular openings (generally between elements 4 and 6) in top, bottom and side sections thereof; panels (2) are mounted in the openings thereby enclosing each frame; at least one hinged panel (10 and 14) connected to an end piece (i.e., element 14 is connected to end piece 4) of one of the frames by a hinge (12) so that the panel (10) can move between an open and a closed position within a frame opening; compressible seals (58 - see Figure 5) contained in each frame arranged to be compressed and closed against an inside surface (generally at 56 in Figure 5) of the panel (10) when the outer surface (at 50) is flush against the frame; and each panel including a front and back cover, e.g., panel (10) has front (50) and back (52) covers, that are spaced apart by a panel perimeter member (unnumbered near 56 and 58 on the left side of Figure 5) and an insulation foam material filling (54 - see column 2, line 59) between the covers.

The claims differ from Van Benthem *et al.* '000 in requiring: (a) the seals to be affixed to the side pieces (claim 17), (b) a living hinge connected to a panel and an end piece of a frame (claim 17) which defines an edge extrusion integrally connected to the panel, a mounting flange

connected to the end piece and a hinge portion therebetween (claim 19); and (c) a latching means (claim 17).

*With respect to (a)*, McIlwraith '393 teaches the unit as advanced above whereby the seals (40) are attached to the side pieces.

*Thus*, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided each of the side pieces in Van Benthem *et al.* '000 with a seal, for assisting in preventing moisture and debris from entering the joints where the panels are connected to the side pieces.

Hampel '672 teaches a unit comprising a frame comprised of panels connected together and a panel (28) hinged to the frame by living hinges (206 - see Figure 10E) whereby the living hinges each comprise an edge extrusion (left side of Figure 10E), a mounting flange (right side of Figure 10E) connected together by a hinge portion (generally between 236); and a latching means (see Figure 11D) for securing the hinged panel (28) in the opening in the frame.

*With respect to (b)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the unit of Van Benthem *et al.* '000 with a living hinge, as taught by Hampel '672, for ease in economy and manufacture since the hinge can be manufactured in one piece.

*With respect to (c)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the unit of Van Benthem *et al.* '000 with a latching means so as to allow the panel to be closed within the frame thereby allowing for increased securing.

***Response to Arguments***

Applicants' arguments with respect to claims 17-20 have been considered but are moot in view of the new ground(s) of rejection.

However, with respect to applicants' arguments concerning the Hampel reference (see page 9), it is noted that although the references appear to be nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references show a panel being hinged to a frame.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art.Unit: 3634

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
December 18, 2003